

FINAL STATEMENT OF REASONS

1) The Update to the Initial Statement of Reasons

The following changes were made to the initial statement of reasons:

The authority for the revisions to the Verification of Installation of Ignition Interlock, form DL 920, Department of Motor Vehicles Ordered Verification of Ignition Interlock, form DL 924 and the Manufacturers Annual Ignition Interlock Device Report of False Positives, form DL 9A were not properly given authority in the initial statement of reasons.

The form DL 920, with a revision date of 7/2007, is currently identified in department regulations and was approved with OAL File number 2007-0806-01S. The initial statement of reasons failed to identify amendments made when the form was revised to the 7/2010 revision date. These amendments are explained as follows:

- Page 2 – Instructions to Driver – Paragraph three is amended to add authority citation when referencing the \$15 fee.
- A paragraph has been added and reads as follows:
“A \$45 administrative service fee is required for voluntary Ignition Interlock Device installation pursuant to 13352(a)(3) or (5). If you install several devices or have one device removed and another installed, a new \$45 fee is not required with this form.”

This paragraph is added to provide authority to collect \$45 administrative fee and inform the participant that a new \$45 will not be required if the device is removed when another device is being installed.

After the Notice of Proposed Regulatory Action was published in the California Regulatory Notice Register on February 19, 2010 (Register 2010, NO. 8-Z), the department made two modifications to the form and retained the 7/2010 revision date. These amendments are explained as follows:

- Page 2 – Instructions to Driver – The reference to a \$15 check or money order has been modified to delete the \$15. Instead, the form requires a check or money order “for the appropriate fee.” This document now serves as a multi-program document and the driver could be required to submit either a check or money order for \$15 or a check for \$45, therefore, the amended language is required for clarity.

- Reference to Vehicle Code section 13352.1 is deleted from the initial 7/2010 version of this form because these violations do not qualify for the optional \$15 IID referenced in the paragraph.
- The words “Vehicle Code section” have been added to paragraph 4 to make the citation easier to identify.

The form DL 924 has a revision date of 7/2010 as this program is not effective until July 1, 2010. The Department of Motor Vehicles Ordered Verification of Installation, form DL 924, was amended since the revision provided in the Notice of Proposed Regulatory Action identified above. Form amendments are explained as follows:

- Page 2- Instructions to Driver – Reference to Penal Code section 191.5(b) is added

The Manufacturer Annual Ignition Interlock Device Report of False Positives, form DL 9A is a form unique to the pilot program and is authorized by Vehicle Code section 13386(g), which requires a manufacturer or a manufacturer’s agent to provide each year to the department information on the number of false positives and time to reset the device. The department will use this information in evaluating and considering the continued certification of an ignition interlock device. The form 9A identifies the Vehicle Code authority and defines “False Positive” as it appears in the proposed regulations. The manufacturer is to identify the model number, type of device, total number of false positives and average reset time. The form also requests starting inventory, total number of new installations, total number of removals and ending inventory.

The Notice incorrectly identifies the revision date of the forms DL 921 and DL 923 as 1/99 under the heading “Documents Incorporated by Reference.” The correct revision date of both forms is 11/99. The initial statement of reasons did not identify revision dates when discussing these forms, however, for clarity purposes, the error is being addressed in this final statement of reasons.

The proposed regulatory text incorporated the following documents by reference and repealed the subsections identifying form components. The initial statement neglected to identify the previous rulemaking package with which each form was approved by the Office of Administrative Law. All subsections identifying the form components have been repealed.

- Application for Certification of Ignition Interlock Device, form DL 9 (REV 4/2000)
Revision date adopted with OAL File Number 2001-0606-03S
- Laboratory Report, form DL 28 (REV 3/2000)
Revision date adopted with OAL File Number 2001-0606-03S

- Ignition Interlock Notice of Removal, form DL 922 (REV 1/2007)
Form adopted with OAL File Number 2007-0806-01S
- Notice of Non-Compliance, form DL 921 (NEW 11/99)
Form adopted with OAL File Number 2001-0606-03S and 2003-0916-05S
- Notice to Employers, Ignition Interlock Restriction, form DL 923 (NEW 11/99)
Form adopted with OAL File Number 2003-0916-05S

The Notice of Proposed Regulatory Action identified all the forms referenced above and directed interested parties who wanted copies of these forms to request them from the department representative identified in the Notice. The department received no requests for forms.

2) Imposition of Mandate on Local Agencies or School Districts

The department's regulatory action amending Sections 125.00, 125.02, 125.12, 125.16, 125.18, 125.20 and 125.22 and adopting Sections 126.00, 126.02, 126.04, 127.00, 127.02, 127.04, 127.06, 127.08 and 127.10 in Article 2.55, Chapter 1, Division 1, of Title 13, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other discretionary cost or savings to local agencies, and (4) no cost or savings in federal funding to the state. No studies or data were relied upon to make this determination.

3) Summary of Comments Received and Department Response

The proposal was noticed on February 19, 2010, and made available to the public from February 19, 2010 through April 5, 2010. A letter was received by the department on March 16, 2010 from Mr. Chris Micheli, representing the law firm of Aprea & Micheli, requesting a public hearing on behalf of his client, Smart Start of California. A second letter was received from Marc Bergman, representing Smart Start of California, at the public hearing.

Identifying No.	Commenter Name, business entity and address
L -1	Marc Bergman, Smart Start 22130 Clarendon Street, 2 nd Floor Woodland Hills, CA 91367

A public hearing was held on April 5, 2010 at 2:00 p.m. at the Department of Motor Vehicles' headquarters Training Annex. The following interested parties appeared and presented comment at the public hearing:

Identifying No.	Commenter Name, business entity and address
P-1	Chris Micheli, Aprea & Micheli, Inc. 1415 L Street, Suite 602 Sacramento, CA 95814
P-2	Abram Garcia, Smart Start 4850 Plaza Drive Irving, TX 75063
P-3	Marc Bergman, Smart Start 22130 Clarendon Street Woodland Hills, CA 91367

The following department employee attended the public hearing and, although the hearing chairperson verbally expressed that responses to comments would be given in the final statement of reasons, the employee, not authorized to respond to issues regarding this action, attempted to respond to comments before the chairperson could close the hearing. The employee's comments were made off the record, however, in an attempt at complete disclosure, the department has determined it necessary to respond to those comments. Since the comments were not captured on the transcript, the employee was asked to submit his comments, to the best of his recollection, to the hearing chairperson. That email is attached in the written comments portion of this record.

P-4	Leonard Marowitz Department of Motor Vehicles 2570 24 th Street Sacramento, CA 95818 LMarowitz@dmv.ca.gov
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The following concerns were raised at the public hearing and in writing.

1) Objection to definition of "False Positive"

- The definition of "False Positive" is not correct. Alcohol readings that hover around the alcohol setpoint could potentially be related to consumed alcohol but the definition would disallow those readings as alcohol related.

Commenters: L-1
P-3

- The language in 125.00(j) does not affirmatively state that false positive test results reflect concentrations of ethanol in the mouth due to mouthwash, cold medicines, etc. and not incorrect measurements by the ignition interlock devices (IIDs).

Commenters: P-4

Department's Response: The department concurs that the definition does not differentiate between alcohol related readings, mouth alcohol or other contaminants, however, in order to properly gather information, as required by this pilot program, the department must capture information on all false positives regardless of the source of alcohol. This information will allow the department to identify problem devices which will aid the department when evaluating a particular device for continued certification.

2) Concerns Related to Device Technology

- Fuel-cell technology is the only technology utilized across the country and it should be the only technology permissible for this pilot program in order to ensure success.

Commenters: L-1

P-3

- It would be a disservice to the participants of the pilot program for nonfuel-cell devices to be allowed.

Commenters: L-1

P-3

- Restricting IIDs to only the fuel cell type in conjunction with the current wording of 125.00(j) would eliminate any possibility that false positives could reflect the malfunctioning of IIDs because fuel cell IIDs only measure ethanol.

Commenters: P-4

Department's Response: A major component of this legislation is the requirement that manufacturers report annually to the department the number of false positives and the time it takes to reset the devices. With this new information being captured, the department will be better equipped to review which technologies are more effective for use in California's Ignition Interlock Device program.

3) Department Hearings

- Any contested hearings on a nonfuel-cell device will be lost by the State because the technology is unreliable and failed tests can occur from cigarette smoke, gasoline fumes, and even spicy foods.

Commenters: L-1

P-3

Department's Response: California's IID program is a compliance based program. Drivers are not subject to hearings due to reports of non-compliance. Once the installer provides the department with a Notice of Non-Compliance, the department will notify the driver that the expiration of the required IID restriction term is paused and of the requirement to comply with the IID installation. The participant will not be permitted to drive until he or she provides the department with a Verification of Installation.

4) Product Reliability Unproven

- Semiconductor units have been proven unreliable.

Commenters: L-1

P-3

Department's Response: Neither the DMV ordered IID installation program, as required by SB 1388, nor the pilot program ordered by AB 91 and SB 598, specify IID technologies to be utilized. Currently, the department requires certification that the IID meets National Highway Traffic Safety Administration (NHTSA) regulation requirements before authorizing the device for use in California. NHTSA authorizes fuel-cell devices as well as semiconductor or sensor devices. If California laws or federal regulations are amended regarding approved device technology, department regulations will be amended accordingly.

5) Alcohol Detection from Samples without Alcohol Present

- The continued use of semi-conductor IID devices, which could measure a breath alcohol concentration above the alcohol setpoint in the presence of spicy foods, cigarette smoke, and maybe other non-ethanol vapors, confounds the language of 125.00(j).

Commenters: P-4

Department's Response: As explained above, the department must capture information on all false positives regardless of the source of alcohol, in order to assess which devices are more effective and aid in the decision to continue certifying devices.

6) Fuel-Cell Mandate Suggestion

- Providers that use Taguchi cell also have a fuel-cell technology available and the department needs to establish this program on and make it a mandate for participating in the program.

Commenters: L-1

P-2

Department's Response: Current federal regulations implement performance requirements but are silent as to technology requirements. If, in the future, federal regulations require the use of specific ignition interlock device technologies, the department will amend its regulations, if necessary.

7) Forthcoming Federal Regulations

- National Highway Traffic Safety Administration (NHTSA) is going to promulgate some legislation regarding standards for an ignition interlock program. It is touted the standards will be fuel-cell only.
Commenters: P-2
- The department should mandate the use of best available technology and that requirement would be consistent with what the NHTSA is about to promulgate.
Commenters: P-1

Department's Response: The department is unaware of current proposed federal regulations to implement a fuel-cell only IID requirement, however, if federal regulations are promulgated, department regulations will be amended accordingly.

8) Sensitive Legal Data Contained in Devices

- The devices contain sensitive legal data that can potentially determine a client's right to drive and remain in the program.
Commenters: L-1
P-3

Department's Response: It is unclear what the commenter defines as "legal data;" however, the devices and the information contained therein carry no personal identifiers such as the participant's birthdate, social security number, credit card information, etc. As identified above, the department's IID program is compliance based. No actions, beyond the current IID restriction, are taken against the participant. The driver will be notified that the expiration of the required IID restriction term is paused and of the requirement to comply with the IID installation.

9) Service Center Location Suggestions

- Providers should be required to set up locations that can install, service and download devices right at the service center.
Commenters: L-1
P-3

Department Response: A manufacturer is currently required by regulation to provide continuing service by an authorized installer during the period the device is installed, without interruption. Services that are required to be performed include physical inspection of the device and vehicle for tampering, calibration of the device, and monitoring of the data contained within the device's memory.

4) Documents Incorporated by Reference

The following documents were incorporated by reference in the proposed text:

- Application for Certification of Ignition Interlock Device, form DL 9 (REV 4/2000) in Section 125.02
- Laboratory Report, form DL 28 (REV 3/2000) in Section 125.02
- Verification of Installation, form DL 920, (REV 7/2010) in Sections 125.12 and 125.16
- Ignition Interlock Notice of Removal, form DL 922 (REV 1/2007) in Sections 125.12 and 125.20
- Notice of Non-Compliance, form DL 921 (NEW 1/99) in Section 125.18
- Notice to Employers, Ignition Interlock Restriction, form DL 923 (11/99) in Section 125.22
- Department of Motor Vehicles Ordered Verification of Ignition Interlock, form DL 924 (REV 7/2010) in Section 126.00
- Exemption for Ignition Interlock Device, form DL 4054B (REV 1/2010), in Section 126.04
- Exemption for Ignition Interlock Device, form DL 4055B (NEW 7/2010) in Section 127.04
- Report of False Positives/Reset Time, form DL 9A (NEW 7/2010) in Section 127.06

The above identified forms are incorporated by reference since it is impractical and cumbersome to publish them in the California Code of Regulations and the forms are readily available from the department. Because these forms are of a sensitive nature, they are controlled by the department and were not posted on the department's website for public viewing. The Notice of Proposed Regulatory Action instructed interested parties to contact the department representative to request a copy of the above specified forms with the amendments shown with underlines and strikeouts. The department received no requests for forms.

5) Determination of Alternatives

No reasonable alternative considered by the department, or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. During the rulemaking process, no alternative that would lessen the adverse economic impact on small business was submitted.